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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 35th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 27 August 1997, at 6 p.m.

Chairman: Mr. MAXIM

later: Mr. BENGOA

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CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

The meeting was called to order at 6 p.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

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(agenda item 11) (continued) (E/CN.4/Sub.2/1997/24, 25, 27 and Add.1, 28, 30, 34 and 38)

1. Mr. CHAVEZ (Observer for Peru) said Peru shared the view that it was desirable to avoid any discussion of a definition of terrorism that might excessively politicize the debate; some States, for example, considered that terrorism was not reprehensible as such, but only in the light of the political aims pursued. In that regard, the working paper submitted by Mrs. Koufa (E/CN.4/Sub.2/1997/28) offered an interesting approach to the issue through the study of terrorism and its links with human rights from an essentially legal standpoint.

2. In that connection, his Government had no doubt that entities other than state entities could violate human rights. Unlike some countries, which

argued that States alone were capable of human rights violations, the Peruvian authorities believed that respect for human rights was not the duty of States alone, but also of any non-governmental, national or international entity, including individuals, because the protection of human rights was a principle of jus cogens.

3. Mr. ZAHRAN (Observer for Egypt) expressed concern about the increasingly frequent offensive remarks, made under the guise of freedom of expression, about religions, and said that statements portraying Islam as a religion contrary to human rights unfortunately did nothing more than stir up hatred among peoples. Generally speaking, what was needed was to eliminate any form of fanaticism and discrimination based on religion or belief.

4. The Egyptian authorities appreciated that respect for human rights was dependent on international peace and security, which was why they had proposed that the Middle East should be declared a nuclear-weapon-free zone and aspired to dispel any threat of the use of weapons of mass destruction throughout the world. In that connection they would like to know whether Sub-Commission resolution 1996/14 (International peace and security as an essential condition for the enjoyment of human rights, above all the right to life) had been transmitted to the Disarmament Commission.

5. Mr. MERIC (Observer for Turkey) said that despite the international community's efforts, terrorism continued to threaten the territorial integrity and security of States, to destabilize legitimately constituted Governments, to undermine pluralist democratic societies and to hamper the economic and social development of nations. Since the early 1980s, Turkey had itself been the victim of a vicious terrorist campaign.

6. In recent years, the United Nations General Assembly and the Commission on Human Rights had adopted a number of resolutions clearly establishing that terrorism violated human rights, particularly the right to life. In Turkey's view, the argument that human rights violations could be committed only by States and not by individuals or groups was inadmissible, and any definition of terrorist acts as mere abuse of the human rights of the victims constituted an incitement to terrorism. In that respect, it was unfortunate that in her report Mrs. Koufa seemed to have adopted that very definition; generally speaking, however, he welcomed the fact that the Sub-Commission had decided to fill the vacuum on that subject.

7. Mr. NAZARIAN (Observer for Armenia), referring to the failure of all the attempts to reach a peaceful settlement to the conflict in Nagorny-Karabakh, drew the international community's attention to the suffering and deprivation of that region's Armenian population, who suffered foreign domination and constant violations of their rights. For more than 10 years, Azerbaijan had flouted the principle of the inviolability of borders and the right of the Nagorny-Karabakh population to self-determination - even though that right was enshrined in the International Bill of Human Rights and numerous other international instruments. In the absence of a constructive and conciliatory attitude on the part of Azerbaijan, all international efforts were doomed to failure, and it was possible that after having destabilized the entire region, the repressive policy pursued by Azerbaijan would ultimately jeopardize the country's domestic peace and security.

8. Mr. SALMAN (Observer for Iraq) said that the Charter of the United Nations had asserted the close link between human rights and peace, the General Assembly had in a number of resolutions urged countries not to commit acts that threatened to undermine the territorial integrity of other countries and various conventions had been adopted prohibiting the use of weapons of mass destruction. Despite the proclamation of those noble principles, all kinds of prohibited weapons which wrought heavy destruction on mankind and the environment had been employed in Iraq during the Gulf war. Moreover, after the ceasefire, the American forces had blown up munitions dumps, causing serious pollution throughout Iraq. In order to prevent the recurrence of such acts, Iraq called for a total ban on all weapons of mass destruction.

9. Mr. MAHMOUD (Observer for the Sudan) said that Decree No. 14, adopted by the Executive in July 1997, contained the essential measures that would permit the implementation of the peace agreement signed on 21 April 1997. In contemporary Sudan, freedom of religion was enjoyed by all and no form of religious discrimination was tolerated. The Shariah ensured respect for cultural pluralism and a code of conduct relating to religious pluralism had been adopted. The Government had established a commission to review the provisions of the Constitution on religious freedom, and would welcome any relevant suggestion.

10. Mr. MOUSSAEF (Observer for Azerbaijan) said that Azerbaijan shared the international community's increasing concern at the upsurge in terrorist acts and their growing number of victims. In resolution 1996/20, the Sub-Commission had reiterated "the unequivocal condemnation of all acts, methods and practices of terrorism ..., as acts of aggression aimed at the annihilation of human rights, fundamental freedoms and democracy, threatening territorial integrity and international peace and security".

11. The great majority of terrorist acts were not isolated individual acts but the product of organized large-scale activities. Some States, which resorted to terrorism in order to carry out their annexation plans, directly or indirectly assisted terrorist and subversive activities which flouted human rights and violated the territorial integrity of other States. Thus, Armenia had frequently resorted to terrorism as part of its policy of aggression against Azerbaijan, which had so far claimed more than 2,000 victims. His Government believed that the time had come to prepare a comprehensive legal framework for combating international terrorism as a crime against humanity, and more specifically to draw up a convention on international terrorism in the spirit of Commission on Human Rights resolution 1997/42.

12. Mrs. AIKEF (Observer for South Africa), referring to the working paper prepared by Mr. El-Hajjé (E/CN.4/Sub.2/1997/30) on the promotion and protection of human rights through the exercise of democracy and the establishment of a democratic society, welcomed the balance achieved by the paper and endorsed the recommendation that it should also analyse those historical and cultural factors that might affect the establishment and promotion of democracy through the exercise of human rights.

13. Referring to a statement made some days earlier by Mr. Khalifa, she said that he had given a deliberately misleading assessment of political and socio-economic developments in South Africa, which was far removed from the

great majority of analyses of the historic process currently underway in South Africa. The Sub-Commission, which needed objective information on the various legislative and practical measures taken by the Government to combat poverty, unemployment and crime, had instead been given an apocalyptic description of the situation. In that connection it might usefully be pointed out that the predictions of civil war in South Africa made by Mr. Khalifa the previous year had been proved wrong. South Africa drew strength from its hope and desire to succeed, and was resolutely looking forward to a better future.

14. Mrs. SYAHRUDDIN (Observer for Indonesia), speaking on behalf of the member countries of the Organization of the Islamic Conference (OIC), protested against the use of human rights forums and machinery to fan the flames of religious hatred and intolerance, and expressed the concern of the members of OIC at the growing number of statements made within the Sub-Commission which were highly insulting to the basic precepts of Islam. The OIC member States, consistent with the dictates of Islam, had always eschewed insults against other religions, their prophets or their holy scriptures. It could only be assumed that the motive of those who insulted Islam was to generate conflict with Islamic peoples or even to justify the injustices to which they were currently being subjected.

15. Her Government fully supported decision 1997/125, adopted by consensus by the Commission on Human Rights, to delete from the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance a blasphemous reference to the Qur'an. It was gratified to note that the Special Rapporteur had made the correction requested.

16. While they supported freedom of expression, the OIC countries pointed out that it could not be used to incite religious hatred or to ridicule or defame any religion. The Sub-Commission and the other human rights mechanisms had a heavy responsibility to discourage any attempt to fan religious confrontation within or outside the United Nations.

17. Mr. SINGH (Observer for India) said it had been stated at a previous meeting by one of the members of the Sub-Commission, that India had been engaged in an effort to abolish the Sub-Commission, or at least clip its wings. On the contrary, India attached great importance to the Sub-Commission's work and to its full and effective functioning. For India, the 1503 procedure was an important instrument which provided civil society with direct access to the Sub-Commission and made it possible to raise issues of concern in all countries of the world. The Indian authorities had been diligent in replying to all the communications transmitted to them by the Centre for Human Rights under that procedure and in providing the Working Group on Communications with full details on the cases referred to them. They attached the highest importance to cooperation with the human rights bodies and mechanisms of the United Nations system and would therefore continue to extend their full support for the future work of the Sub-Commission, which was a unique forum for interaction and dialogue among experts, NGOs and States.

18. Mr. MINH (Observer for Viet Nam), speaking in exercise of the right of reply, said his delegation took exception to the mendacious allegations made about Viet Nam by two Vietnamese living abroad, under cover of the

International Federation of Human Rights Leagues and on behalf of the so-called "Vietnamese Committee for Human Rights". The allegations were motivated by hatred and nostalgia for a barbarous and unpopular South Vietnamese regime which had been overthrown by the people in 1975.

19. His Government loyally carried out its commitment to unfailingly respect freedom of religion and belief and sought to unite all Vietnamese, whether in Viet Nam or abroad, without distinction on grounds of sex, religion or former belief, in order to build a prosperous and democratic Viet Nam. Article 70 of the 1992 Constitution established the right of citizens to freedom of religion and belief and the equality of all religions before the law. For those reasons, his delegation categorically rejected those mendacious allegations and urged those responsible for them to give up the political strategy whereby they had been endeavouring for decades to obstruct Viet Nam's development.

20. Mr. AKRAM (Observer for Pakistan), speaking in exercise of the right of reply, said that for a number of years Pakistan had been the target of a well-orchestrated propaganda campaign by the Indian authorities, whose agents, the members of NGOs funded by India, operated even within the Sub-Commission. The aim of that campaign was to distract the international community's attention from the atrocities committed by the Indian occupation forces in Jammu and Kashmir for 25 years. The Government of India spoke of peace but was waging a relentless war against the Kashmiris and Pakistanis with the aim of wrecking the talks started at Pakistan's initiative between India and Pakistan, and continuing the repression of the people of Jammu and Kashmir.

21. Mr. YIMER pointed out that in 1982 the Sub-Commission had adopted the principle that no Government should criticize another Government within the Sub-Commission, in order to ensure the Sub-Commission was not forced to hear rights of reply by one country to another. He would ensure that the principle was observed at the Sub-Commission's next session.

22. The CHAIRMAN said that consideration of agenda item 11 had thus been concluded.

23. Mr. Bengoa took the Chair.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Draft resolutions and decisions relating to agenda item 1 (c)
(E/CN.4/Sub.2/1997/L.43, L.45 and L.55)

Draft decision E/CN.4/Sub.2/1997/L.43 (Methods of work of the Sub-Commission regarding agenda item 2)

24. Mr. ALFONSO MARTINEZ pointed out that decision 1996/115 had concerned only the forty-ninth session of the Sub-Commission, whereas the text under consideration concerned all future sessions. From that standpoint, it would perhaps be desirable to give the Sub-Commission the possibility of not remaining silent when exceptionally grave situations occurred in countries.

Accordingly, he asked the sponsors of the draft decision whether they could include in their text the last part of paragraph 3 (b) of Commission resolution 1997/22, in which the Sub-Commission was requested to "limit action to exceptional cases in which new and particularly grave circumstances arise".

25. Mr. BOSSUYT said that the sponsors of draft decision L.43, who had in fact been the sponsors of decision 1996/115, had not wished to make provision for such exceptions for fear that, every year, the Sub-Commission might find exceptional cases to study. In his view, that was a sound practice.

26. Mr. KHALIL said there was a danger that the Sub-Commission might be unnessarily tying its own hands and requested that the possibility for it to intervene should be preserved as the Commission's resolution did not exclude such action.

27. Mr. JOINET proposed that, in view of the consistently constructive nature of the Chairman's decisions in the past, the following amendment should be made to the eleventh line of the text: "decides, henceforth, not to adopt any resolutions or decisions under that agenda item", thereby giving the Sub-Commission the opportunity to opt for a decision by the Chairman.

28. Mr. ALFONSO MARTINEZ supported the proposal, adding that as no decision was immutable, it would always be possible for the Sub-Commission, at future sessions, to reverse earlier decisions if required to do so by serious circumstances.

29. Mr. YIMER confirmed that there was such a possibility.

30. Mr. KHALIL said that he again wished to stress the need to avoid too restrictive an interpretation of Commission resolution 1997/22 which would be to the detriment of the Sub-Commission's interests.

31. Mr. CHERNICHENKO, speaking as a sponsor of draft decision L.43, said that it had been prepared in the spirit of resolution 1997/22; he hoped that it could be adopted without a vote.

32. The CHAIRMAN said he took it that the sponsors of draft decision L.43 accepted Mr. Joinet's amendment and proposed that it should be adopted, as amended, without a vote.

33. Draft decision E/CN.4/Sub.2/1997/L.43, as orally amended, was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.45 (Methods of work of the Sub-Commission)

34. The CHAIRMAN announced that Mr. Joinet had joined the sponsors of the draft resolution.

35. Draft resolution E/CN.4/Sub.2/1997/L.45 was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.55 (Organization of the sessions of the Sub-Commission)

36. Mr. WEISSBRODT said that although there were some interesting points in the draft resolution, in his view it would be inappropriate to adopt it in the present circumstances.

37. Mr. EL-HAJJÉ requested that his name should be withdrawn from the list of sponsors.

38. Mr. FAN Guoxiang said that he would not object to the adoption of the draft resolution by consensus but, in his view, the difficulties encountered by the Sub-Commission had more to do with its methods of work than with the shortness of its sessions.

39. Mrs. PALLEY, supported by Mr. LINDGREN ALVES, Mr. YIMER and Mr. PARK, said that it was very difficult for people who already had a very busy professional schedule to set aside five weeks; she therefore opposed the proposal.

40. The CHAIRMAN announced that Mr. Khan had joined the sponsors of the draft resolution.

41. Mr. ALFONSO MARTINEZ pointed out that the proposal concerned an experimental change in the duration of the session solely for the Sub-Commission's fiftieth, fifty-first and fifty-second sessions.

42. The CHAIRMAN put the draft resolution to the vote.

43. At the request of Mr. Weissbrodt, the vote was taken by roll-call.

Mrs. Warzazi, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Alfonso Martínez, Mr. Bossuyt, Mr. Díaz Uribe, Mr. Eide, Mr. Fix Zamudio, Mr. Guissé, Mrs. Gwanmesia, Mr. Khalil, Mr. Khan, Mr. Maxim, Mr. Mehedi and Mrs. Warzazi.

Against: Mr. Fan Guoxiang, Mr. Hatano, Mr. Joinet, Mr. Lindgren Alves, Mrs. Palley, Mr. Park and Mr. Weissbrodt.

Abstaining: Mrs. Attah, Mr. Chernichenko, Mrs. Daes, Mr. El-Hajjé and Mr. Yimer.

44. Draft resolution E/CN.4/Sub.2/1997/L.55 was adopted by 12 votes to 7, with 5 abstentions.

45. Mr. ALFONSO MARTINEZ, speaking on a point of order, requested that document E/CN.4/Sub.2/1997/CRP.2 entitled "Criteria for new studies" should be treated either as a decision by the Sub-Commission or as an annex to the resolution on the Sub-Commission's methods of work.

46. The CHAIRMAN said that the secretariat would take his request into account.

Draft resolutions relating to agenda item 4 (E/CN.4/Sub.2/1997/L.38, L.39 and L.52)

Draft resolution E/CN.4/Sub.2/1997/L.38 (Promotion of the realization of the right of access of all to drinking water supply and sanitation services)

47. Mr. JOINET, supported by Mrs. WARZAZI, proposed that the words "that increasingly numerous populations are affected by the deterioration of drinking water" should be inserted after the words "deprived of access to drinking water supply" in the eighth preambular paragraph.

48. Draft resolution E/CN.4/Sub.2/1997/L.38, as orally amended, was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.39 (Women and the right to adequate housing and to land and property)

49. Mr. DIAZ URIBE proposed that the words "and to land and property" should be inserted after the words "the right to adequate housing" in operative paragraphs 8 and 10, and that the words "and rights to land and property" should be inserted after the words "the issue of the housing rights" in operative paragraph 11 to bring the text of the resolution into line with its title.

50. Mr. JOINET, supported by Mr. GUISSÉ proposed the following amendment to the title of the draft resolution: "Women and the right of access to adequate housing and to land and property"; the issue raised was in fact women's legal capacity to rent or purchase housing, land or property.

51. Mrs. DAES said that she opposed the proposal because, in her view, the expression "right of access" weakened the fundamental legal concept.

52. Mr. EL HAJJÉ said that he shared her opinion.

53. Mr. WEISSBRODT, speaking on a point of order, requested the Chairman to ask those members of the Sub-Commission who wished to discuss points of drafting to do so in private so as to avoid slowing down the debate.

54. Mr. CHERNICHENKO, speaking on a point of order, said that the wording adopted for the title of the draft resolution would have little impact on the problems of access to housing, land and property which women faced in practice.

55. Mr. LINDGREN ALVES pointed out that the expression "right to adequate housing" had been adopted at the United Nations Conference on Human Settlements (Habitat II) after lengthy and complex negotiations and that it would be a pity for the Sub-Commission to call it into question.

56. Mr. JOINET withdrew his proposal.

57. Draft resolution E/CN/4/Sub.2/1997/L.39, as orally amended, was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.52 (Question of the impunity of perpetrators of violations of human rights (economic, social and cultural rights))

58. Draft resolution E/CN.4/Sub.2/1997/L.52 was adopted.

Draft decisions and resolutions relating to agenda item 6 (E/CN.4/Sub.2/1997/L.14, L.36 and L.37)

Draft decision E/CN.4/Sub.2/1997/L.14 (Systematic rape and sexual slavery and slavery-like practices during periods of armed conflict)

59. Mrs. WARZAZI said that as none of the titular experts had wished to complete the study on the situation with regard to systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, she would agree, on an exceptional basis, to Ms. McDougall, Mr. Weissbrodt's alternate, undertaking the study.

60. Mr. ALFONSO MARTINEZ and Mrs. DAES said that they too supported the draft decision.

61. The CHAIRMAN announced that Mrs. Daes, Mr. Joinet, Mrs. Gwanmesia, Mr. Diaz Uribe, Mr. Eide, Mr. Guissé, Mr. Fix Zamudio and Mrs. Attah had joined the sponsors of the draft decision.

62. Draft decision E/CN.4/Sub.2/1997/L.14 was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.36 (United Nations Voluntary Trust Fund on Contemporary Forms of Slavery)

63. Mrs. WARZAZI speaking as Chairperson of the Working Group on Contemporary Forms of Slavery, earnestly appealed to the observers to call on their Governments to make a contribution to the Fund, whose existence was currently threatened by its very precarious financial situation. The members of the Sub-Commission might also draw their Governments' attention to the great difficulties facing the Fund.

64. Mr. JOINET said that many institutions depended on the United Nations voluntary funds in order to operate, and the difficulties currently encountered by those funds were linked to the overall crisis of the United Nations and to the failure of many countries to pay their contributions.

65. Mrs. ATTAH said that she would not oppose the adoption of the draft resolution by consensus, although she had reservations about operative paragraph 2.

66. The CHAIRMAN announced that Mr. Joinet had joined the sponsors of the draft resolution.

67. Draft resolution E/CN.4/Sub.2/1997/L.36 was adopted.

68. Mr. WEISSBRODT said that if a vote had been taken on the draft resolution, he would have abstained.

Draft resolution E/CN.4/Sub.2/1997/L.37 (Report of the Working Group on Contemporary Forms of Slavery)

69. The CHAIRMAN announced that Mrs. Daes, Mr. Joinet and Mr. Fix Zamudio had joined the sponsors of the draft resolution.

70. Draft resolution E/CN.4/Sub.2/1997/L.37 was adopted.

Draft resolution relating to agenda item 8 (E/CN.4/Sub.2/1997/L.41)

Draft resolution E/CN.4/Sub.2/1997/L.41 (Prevention of discrimination against, and protection of, minorities)

71. Mr. ALFONSO MARTINEZ said he wished to express a number of reservations about certain passages of the draft resolution. In connection with operative paragraph 2, he asked why, unlike the reports of the Sub-Commission's other working groups, the report of the Working Group on Minorities would be submitted to the Commission on Human Rights. Regarding paragraph 3, he asked exactly when the mandate of the Working Group ended and if its extension was to be requested at the current session. Finally, in his view, it was going too far to refer, as was done in paragraph 4, to the preventive activities of the United Nations High Commissioner for Human Rights in respect of minorities, as there had been no definition of any such preventive activity by the High Commissioner for Human Rights.

72. Mr. YIMER said it was possible that the Working Group might become a permanent body.

73. Mr. EIDE said he had no objection to the Working Group being given a permanent mandate. Regarding the submission of its report to the Commission on Human Rights, he explained that it was the final report of the Working Group, which had held its three planned sessions, and that the Commission had itself requested that that should be done. Regarding the preventive activities of the High Commissioner for Human Rights, the aim of the sponsors had merely been to underscore the importance of communication between the High Commissioner and Governments as soon as situations of discrimination against minorities arose.

74. Mr. CHERNICHENKO proposed that the words "as well as the working papers prepared by members of the Working Group" should be inserted after the words "third session" in paragraph 2.

75. Mrs. WARZAZI announced that she wished her name to be removed from the list of sponsors of the draft resolution in order to be able to propose drafting changes to the text. She thus proposed that Mr. Chernichenko's amendment should be accepted and that the words "for a further three years" should be deleted from paragraph 3.

76. Mr. FAN Guoxiang proposed that the whole of the second part of paragraph 4 from the words "with a view to strengthening" should be deleted.

77. Mr. EIDE, speaking as a sponsor of the draft resolution, said that he accepted the proposals made by Mrs. Warzazi and Mr. Fan Guoxiang.

78. Mr. BOSSUYT said that paragraph 16 should also be amended to take account of the amendment approved in paragraph 3, and that the words "for a further three years" and "namely, in 1998, 1999 and 2000" should be deleted.

79. Mr. ALFONSO MARTINEZ proposed that the words "of five working days" should be added after the word "session" in the last line of paragraph 16.

80. Mr. LINDGREN ALVES said that as a sponsor of the draft resolution, he would have preferred it to remain in its original form. He wondered whether the fact that amendments were being proposed by certain sponsors meant that members became sponsors of drafts which they had not read attentively. However, he would not oppose the adoption of the draft resolution by consensus.

81. The CHAIRMAN said he took it that the Sub-Commission accepted the amendments proposed.

82. It was so decided.

83. Draft resolution E/CN.4/Sub.2/1997/L.41, as orally amended, was adopted.

Draft decisions and resolutions relating to agenda item 9
(E/CN.4/Sub.2/1997/L.9, L.25, L.40, L.48 and L.49)

Draft resolution E/CN.4/Sub.2/1997/L.9 (Situation of street children and minor detainees)

84. Draft resolution E/CN.4/Sub.2/1997/L.9 was adopted.

Draft decision E/CN.4/Sub.2/1997/L.25 (Report of the sessional working group on the administration of justice)

85. Mr. WEISSBRODT proposed, after consultation with Mr. Alfonso Martinez, that the words "in all circumstances" should be inserted after the words "should be considered" in the ninth line of the text.

86. Mr. JOINET said that he endorsed the amendment and hoped that the draft decision would be adopted by consensus.

87. The CHAIRMAN announced that Mrs. Daes, Mr. Fix Zamudio and Mr. Guissé had joined the sponsors of the draft decision.

88. Mr. YIMER asked, on the assumption that the recommendation in question was approved, whether the new general comment on article 4 of the International Covenant on Civil and Political Rights would be considered as an amendment to the Covenant or as an interpretation of the article. He also asked what the status of the new general comment would be in relation to the Covenant.

89. Mr. JOINET said that the intention had initially been to supplement the Covenant with a protocol on that particular point, but it had become apparent from the discussions between the Chairman of the sessional working group on the administration of justice and the Chairperson of the Human Rights Committee that the Committee had been prepared to interpret article 4 of the Covenant as desired by the sponsors of the draft decision. Accordingly, it was not a question of changing the norm but of encouraging its proper interpretation.

90. Mr. ALFONSO MARTINEZ pointed out that, in conformity with article 51 of the Covenant, States parties alone could propose amendments to the Covenant. It was not a matter either for the Working Group or for the Sub-Commission. For those reasons, the Sub-Commission should content itself with voicing the increasingly widespread view that habeas corpus and the associated elements of amparo should be considered as non-derogable rights.

91. Draft decision E/CN.4/Sub.2/1997/L.25 was adopted.

Draft decision E/CN.4/Sub.2/1997/L.40 (The administration of justice and human rights)

92. Draft decision E/CN.4/Sub.2/1997/L.40 was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.48 (Juvenile justice)

93. Mr. ALFONSO MARTINEZ pointed out that in paragraph 4 of the English version the word "system" should be in the plural.

94. Draft resolution E/CN.4/Sub.2/1997/L.48 was adopted, with the above-mentioned editorial change.

Draft resolution E/CN.4/Sub.2/1997/L.49 (Privatization of prisons)

95. Mr. ALFONSO MARTINEZ said that the question of the appointment of an expert as special rapporteur in order to undertake an in-depth study on all issues relating to the privatization of prisons had been thoroughly discussed within the working group on the administration of justice. The working group had taken the view that the text of the decision recommended by the Sub-Commission to the Commission for adoption in paragraph 2 of the draft resolution should be worded in the same way as decision 1993/109 of the Sub-Commission. For that reason, the Commission was requested to recommend that the Economic and Social Ccuncil should authorize the Sub-Commission to appoint "one of its titular experts as special rapporteur" without specifying a name, in order to ensure that the Commission did not have to weigh up the merits of a particular expert if he was mentioned in person.

96. Nevertheless, he proposed that the words "the rule of law" should be replaced by the words "the obligation to respect and apply legislation in force in the country concerned" in the fourth line of paragraph 1.

97. The CHAIRMAN said that the Sub-Commission would continue consideration of draft resolution L.49 at its next meeting.

The meeting rose at 9.05 p.m.